

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

THE ESTATE OF ANTONIO CRUZ,  
et al.

Plaintiffs,

v.

GALAXY NUTRITIONAL FOODS, INC.,  
et al.,

Defendants.

Civil No. 06-1662 (JAF)

**OPINION AND ORDER**

Plaintiffs, the Estate of Antonio Cruz, Wilma Colón, Joel E. Cruz, Jorge E. Cruz, Antonio E. Cruz, and Anelmy Cruz, bring the present diversity action against Defendants, Galaxy Nutritional Foods, Inc. and various unnamed defendants, alleging state claims for breach of contract, damages, unjust enrichment, and breach of the Puerto Rico Dealership and Sales Representative Acts, 10 L.P.R.A. § 278 (2004) ("Law 75") and 10 L.P.R.A. § 279 (2002) ("Law 21"). Docket Document No. 1-1.

On September 5, 2006, Defendants moved to dismiss this diversity action for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). Docket Document No. 6. Significantly, Defendants did not argue that the parties in this case are not actually diverse, only that Plaintiffs' original complaint

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1 failed to plead the parties' citizenship adequately, with sufficient  
2 specificity. Id.

3 Plaintiffs responded to Defendants' motion to dismiss on  
4 September 6, 2006, by amending their complaint to include specific  
5 allegations of each party's citizenship. Docket Document Nos. 7,8.  
6 We agree with Plaintiffs that the amendment, made before Defendants  
7 had answered Plaintiffs' complaint, was proper and effectively  
8 eliminated the grounds for dismissal raised by Defendants. See FED.  
9 R. CIV. P. 15(a) (allowing a party to amend a pleading once "as a  
10 matter of course at any time before a responsive pleading is  
11 served"); Heller v. Allied Textile Co., 276 F.Supp. 2d 175, 181  
12 (D.Me. 2003) (stating that a district court may permit a plaintiff to  
13 amend the pleadings to establish subject matter jurisdiction if the  
14 original complaint contains some indication of an existing foundation  
15 for jurisdiction).

16 In accordance with the foregoing, we **DENY** Defendants' motion to  
17 dismiss.

18 **IT IS SO ORDERED.**

19 San Juan, Puerto Rico, this 18<sup>th</sup> day of December, 2006.

20 s/José Antonio Fusté  
21 JOSE ANTONIO FUSTE  
22 Chief U. S. District Judge